



Dutta Energy Corporation

**Decision on Preliminary Question
Application for Review of Disposition 29670-D01-2024
Closure Letter**

March 6, 2025

Alberta Utilities Commission

Decision 29782-D01-2025

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Proceeding 29782

Application 29782-A001

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1 Decision summary

1. In this decision, the Alberta Utilities Commission (AUC) denies an application by Dutta Energy Corporation (DEC or the review applicant) to review and vary closure letter 29670-D01-2024¹ dated December 17, 2024 (the December closure letter).

2. In the December closure letter, the AUC closed Application 29670-A001, filed by DEC seeking approval to construct and operate a new 9.5-megawatt (MW) solar power plant designated as the Bright Future Collective Solar Project (the Bright Future project), located in the town of Fairview.

3. This checklist application for the Bright Future project was one of nine separate applications filed by DEC to construct and operate four solar projects. The nine applications were filed on the AUC's checklist application form, beginning in September 2024. The AUC closed all nine of the applications, either because they contained major deficiencies, or because they did not qualify as checklist applications. Two of the nine checklist applications were submitted for the Bright Future project.

4. DEC applied to the Commission to review and vary the December closure letter, which closed the second Bright Future project checklist application and directed DEC to file future applications using a full Rule 007: *Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines* application.

5. DEC also applied to the Commission to review and vary closure letter 29597-D01-2024 dated November 20, 2024.² In this closure letter, the AUC closed, for the third time, a checklist application by DEC for a 9.5 MW power plant project, designated as the Sunbeam Meadows Solar Project, located in the town of Whitecourt. This decision is issued concurrently with Decision 29738-D01-2025,³ which denies DEC's application to review and vary closure letter 29597-D01-2024.

¹ AUC letter closing proceedings 29642, 29643 and 29670 – Closure of proceedings – Projects do not qualify as checklist applications or exemptions, December 17, 2024.

² AUC letter closing Proceeding 29597 – Application containing major deficiencies, November 20, 2024.

³ Decision 29738-D01-2025: Dutta Energy Corporation, Decision on Preliminary Question Application for Review of Disposition 29597-D01-2024 Closure Letter, Proceeding 29738, March 6, 2025.

2 Background

6. DEC filed its first application for the Bright Future project on October 3, 2024, in Proceeding 29374 (the first application). The AUC closed the first application on November 22, 2024, because the project did not qualify to be filed as a checklist application (November closure letter).⁴ Specifically the AUC concluded that DEC had provided insufficient information to support its conclusion that the project would have no adverse effect on the environment. The Commission considered putting the application into abeyance to permit DEC to file a complete application but concluded that no efficiencies would be gained by adopting that approach. Instead, the AUC advised DEC that it could re-apply for the power plant when it was in possession of the information required to satisfy all requirements listed in Rule 007 for a solar power plant application.

7. DEC disregarded the AUC's direction to file a complete Rule 007 application for the Bright Future project. Instead, DEC refiled its checklist application as Proceeding 29670 (the second application). DEC included several appendices with the second application including a Wetland Assessment and Impact Report (WAIR).⁵ The AUC closed the second application in its December closure letter for substantially the same reasons as it closed the first application: it included insufficient evidence to support DEC's assertion that the project would have no adverse environmental effects. The AUC also directed DEC to file future power plant applications using the full solar power plant application form, as set out in Rule 007, and informed DEC that it would close any future checklist applications for new power plants without further explanation.

8. DEC filed its application to review and vary the December closure letter pursuant to Section 10 of the *Alberta Utilities Commission Act* and Rule 016: *Review of Commission Decisions* (the review application). DEC included an additional environmental evaluation with its submission. The Commission designated the review application as Proceeding 29782.

9. The AUC issued a letter on February 4, 2025, deeming the review application complete. The letter closed the record of the proceeding and stated no additional information was required to reach a decision. The letter also stated that the deadline to issue a decision was March 6, 2025.

10. On February 27, 2025, DEC filed a letter attaching an environmental evaluation dated February 10, 2025 (the February environmental evaluation),⁶ that is substantially the same as the additional environmental evaluation filed with the review application and the WAIR filed in Proceeding 29670. DEC stated that it was filing the February environmental evaluation out of an abundance of caution, after third-party review, to confirm this document meets the AUC's information requirements for solar facilities.

11. In reaching its determinations, the Commission reviewed the records of proceedings 29374 and 29670, and the record of this proceeding. Despite the February environmental evaluation being submitted after the close of record, without an accompanying procedural motion asking for permission for it to be considered, the Commission nonetheless considered the February environmental evaluation.

⁴ AUC letter closing Proceeding 29374 – Project does not qualify as a checklist application, November 22, 2024.

⁵ Exhibit 29670-X0001, Bright Future Collective Solar Project Wetland Assessment and Impact Report.

⁶ Exhibit 29782-X0006, DEC February 27, 2025 Letter to the AUC re updated Environmental Evaluation.

12. In this decision, the Commission panel considering the review application is referred to as the “review panel.”

3 The Commission’s review process

13. The Commission’s authority to review its own decisions is discretionary and is found in Section 10 of the *Alberta Utilities Commission Act*. Rule 016 sets out the process for considering an application for review.

14. The review process has two stages. In the first stage, a review panel decides if there are grounds to review the original decision (the preliminary question). If the review panel decides to review the decision, it moves to the second stage where it decides whether to confirm, vary, or rescind the original decision (the variance question). In this decision, the review panel has decided the preliminary question and does not need to decide the variance question.

15. Under Section 5(1)(a) of Rule 016, the Commission may grant an application for review if the applicant demonstrates that the Commission “made a palpable and overriding error of fact, or mixed fact and law where the legal principle is not readily extricable, which is material to the decision.” The Commission does not consider applications for review for alleged errors of law, instead, those are heard exclusively by the Court of Appeal. Further, Section 5(3) of Rule 016 authorizes the Commission to “dismiss a ground in an application for a review, with or without further process, if the ground raises an error outside the scope of subsection 5(1).”

4 Issues

16. In its review application, DEC asserts that the AUC made two errors in the December closure letter:

- The Commission made a material error in finding that the Bright Future project has any environmental effects because the evidence did not support a conclusion that the project had any wetland impacts.
- The Commission made a material error in finding DEC and/or Debasatwa Dutta were careless or deliberately misleading in their preparations of the checklist applications and imposing a blanket, indefinite restriction on DEC’s ability to use the checklist applications process set out in Section 4.2 of Rule 007.

17. Before addressing the grounds raised by DEC, the review panel finds that it must first consider two preliminary issues. First, does Rule 016 apply to the December closure letter? Second, do the grounds for review asserted raise errors that are within the scope of Rule 016?

5 Review panel findings

5.1 Rule 016 does not apply

18. Section 10 of the *Alberta Utilities Commission Act* allows the Commission to review its own decisions. Section 76(1)(e) of the *Alberta Utilities Commission Act* grants the Commission broad authority to make rules governing any matter or person within its jurisdiction, including the authority to make rules of practice governing the Commission's procedure and hearings. Under this broad authority, the Commission made Rule 016, which sets out the process to consider an application to review a decision.

19. The term "decision" is defined in Section 1(a) Rule 016 as follows:

- (a) "decision" includes a decision, order, costs order, licence, permit, approval and administrative penalty issued by the Commission under the *Alberta Utilities Commission Act* or any other enactment or rule under the jurisdiction of the Commission, but does not include a complaint resolution letter made by the Compliance and Enforcement division (an independent division of the Commission).

20. This definition of a "decision" to which Rule 016 applies refers to a class of documents that are issued following a review of the merits of an application. The class of documents that are subject to review under Rule 016 is exhaustive.⁷ In contrast, the Commission's decision to close the Bright Future project checklist application was an administrative decision based on an assessment of the completeness of the record in that proceeding. The Commission did not review the merits of the application on the Bright Future project. Rather, the Commission found that DEC was required to file a complete application pursuant to Rule 007 for the Commission to make a public interest decision on the Bright Future project.

21. The review panel finds that the administrative decision to close the Bright Future project application is not the type of decision that Rule 016 is intended to address and is satisfied that it could dismiss the DEC review application on this basis alone.

5.2 The alleged errors are unspecified

22. DEC asserts in its review application that the AUC made two material errors, but did not specify if the alleged errors are (i) errors of fact, (ii) errors of mixed fact and law, or (iii) errors of law. The Commission has previously stated that "[i]t is not up to a review panel to decipher an applicant's grounds for review or reframe the issues to attempt to extricate an error which falls within the grounds articulated in Rule 016."⁸ In accordance with Section 5(3) of Rule 016, this failure to specify the nature of the errors alleged also provides a sufficient basis for the dismissal of DEC's application for review.

23. Notwithstanding the above, the review panel considers it appropriate to further address each of the grounds raised given the regulatory history of the DEC applications. The review

⁷ R. Sullivan, *The Construction of Statutes*, 7th ed (LexisNexis Canada, 2022) at ch 4, ss 4.04.

⁸ Decision 26895-D01-2021: ATCO Electric Ltd., Decision on Preliminary Question, Application for Review of Decision 26477-D01-2021, ATCO Electric Ltd. 2020-2022 General Tariff Application Compliance Filing, Proceeding 26895, paragraph 28.

panel is only doing so to ensure that DEC fully understands the AUC application process for new power plants so that it can effectively access that process in the future.

5.3 The Bright Future project does not qualify for a checklist application

24. In this section, the review panel discusses the two issues raised by DEC in the review application. The review panel first describes the AUC's application process for new power plants and explains the difference between:

- (a) a Rule 007 application that requires the filing of all information requirements specific to the type of applied-for power plant; and
- (b) a checklist application which requires the preparation of all necessary materials to support the application without the need to file those materials as a part of the application.

5.3.1 The application process for new power plants

25. Commission approval is required to construct or operate a power plant in Alberta.⁹ In its process to review an application to construct or operate a power plant, the Commission must consider whether its approval is in the public interest, having regard to the social, economic and environmental effects of the power plant.¹⁰

26. Section 76(1)(a) of the *Alberta Utilities Commission Act* gives the AUC broad authority to make rules governing the "procedures and processes applicable to locating, building, constructing and operating facilities or infrastructure over which the Commission has jurisdiction."

27. The AUC exercised this broad authority to make Rule 007. Rule 007 describes two types of applications for power plants:

- (a) a full application that includes all the information requirements in Rule 007 specific to that type of power plant, and
- (b) a checklist application responding to certain questions and confirming that all regulatory requirements are met.

28. The information requirements for a solar power plant application are found in Section 4.4 of Rule 007. Section 4.4.2 sets out 30 information requirements (SP1 to SP30) for all new solar power plants. Every applicant must substantially satisfy these information requirements regardless of whether the form of application is a full application or a checklist application. The main difference between these processes for the applicant is a matter of documentation provided to the Commission. Once a prospective applicant compiles the information required by SP1 to SP30, it can then assess whether its project qualifies for a full application or a checklist application.

⁹ *Hydro and Electric Energy Act*, RSA 2000, C H-16, Section 11.

¹⁰ *Alberta Utilities Commission Act*, Section 17.

29. Checklist applications were introduced on a limited basis in 2020 through Bulletin 2020-15.¹¹ The checklist process introduced “an expedited approach to low-risk applications by **established applicants**.”¹² Since that time, the AUC has made it clear that applicants using the checklist process were required to satisfy all the underlying information requirements, and if necessary, produce that information when requested.

30. The AUC also confirmed that “[i]ncomplete or ineligible checklist applications will be processed in accordance with the facilities performance standards.”¹³ Those performance standards are premised upon the filing of a full Rule 007 application. A fundamental principle of Rule 007 is that the Commission will not process applications that contain major deficiencies.¹⁴

31. The AUC expanded its checklist application process in 2022 to address small power plants including solar power plants of one MW or greater and less than 10 MW. The AUC described the expanded process in Bulletin 2022-04¹⁵ and again emphasized that incomplete or ineligible checklist applications will be processed in accordance with the facilities performance standards.

32. To qualify as a checklist application, the proposed solar power plant must meet each of the following criteria found in Section 4.2 of Rule 007:

- Is or will be located at a site that will have a total capability of one MW or greater and less than 10 MW, regardless of whether the energy generated is solely for its own use or for export to the Alberta Interconnected Electric System;
- Does not directly and adversely affect any person;
- Has no adverse effect on the environment; and
- Complies with Rule 012: *Noise Control*.

33. If a proposed solar power plant satisfies these criteria, the proponent may use a checklist application form to file its application. The checklist process is binary; a checklist applicant must be able to answer “yes” to each of the above statements to qualify as a checklist. If an applicant cannot answer yes to one of the criteria, it must file a full application.

34. Checklist applicants are not required to file any other related supporting documents (e.g., participant involvement program summaries, noise impact assessment, etc.). However, checklist applicants are required to retain all related supporting documents and to submit those documents to the AUC upon request.¹⁶

¹¹ Bulletin 2020-15: *Reducing regulatory burden: checklist application pilot project for low-risk electric transmission and gas utility pipeline applications*, April 29, 2020.

¹² Bulletin 2020-15, PDF page 1 [emphasis added].

¹³ Bulletin 2020-15, PDF page 2.

¹⁴ AUC Rule 007, Section 2.3, PDF page 6.

¹⁵ Bulletin 2022-04: *Regulatory streamlining of all new power plants equal to or greater than one megawatt and less than 10 megawatts and exemption to file an application for own-use power plants eliminated*, March 24, 2022.

¹⁶ AUC Rule 007, Section 4.2, PDF pages 10 and 11.

35. Following receipt of a checklist application, the Commission assesses whether the application is eligible to be approved as a checklist application. If the Commission determines that an application is not eligible to be approved as a checklist or is deficient, it may ask an applicant to file supplemental information or to refile the application as a full application. This process is explicitly set out in Section 4.3 of Rule 007.

36. A decision by the AUC to close a checklist application does not preclude the applicant from refiling an application for the proposed project as a full application that includes all the applicable information requirements set out in Section 4 of Rule 007.

37. In the sections of this decision that follow, the review panel assesses the applicant's grounds for review, considering the Rule 007 framework described above.

5.3.2 The environmental effects of the Bright Future project are uncertain

38. DEC asserts that the AUC erred in finding that the Bright Future project has environmental effects. This is incorrect. The AUC found that the additional evidence filed by DEC did not support that the project would have no environmental impacts. Specifically, that it would have no environmental effects on wetlands. Accordingly, the AUC instructed DEC, for the second time, to file a full application under Rule 007.

39. The AUC identified two deficiencies in the wetland evidence filed by DEC. The first deficiency was the WAIR did not meet the mandatory requirements for such a report as set out in the *Wetland Assessment and Impact Report Directive*.¹⁷ The second deficiency was the uncertainty about whether the report was prepared by an "authenticating professional" as required by the *Professional Responsibilities in Completion and Assurance of Wetland Science, Design and Engineering Work in Alberta* document.¹⁸

40. DEC challenged these findings in its review application. DEC stated that the WAIR was prepared by a registered, professional biologist and noted that professional biologists can authenticate regulatory documents in accordance with Section 4.1.1 of the *Professional Responsibilities in Completion and Assurance of Wetland Science, Design and Engineering Work in Alberta*.

41. The review panel acknowledges that the WAIR was prepared by a professional biologist. However, Section 4.4 of the same document sets out further professional experience requirements to be an authenticating professional for wetland documents.¹⁹ The review application is silent on this requirement and on whether the author has the requisite experience to authenticate wetland documents. The member directory on the Alberta Society of Professional Biologists website lists the qualifications of members. The author is identified on that website as a professional biologist, but is not identified as an authenticating professional for wetlands.²⁰

¹⁷ Government of Alberta. Alberta Wetland Assessment and Impact Report Directive. Water Policy Branch, Alberta Environment and Parks, Edmonton, Alberta, June 1, 2017, PDF page 4.

¹⁸ Government of Alberta. Professional Responsibilities in Completion and Assurance of Wetland Science, Design and Engineering Work in Alberta, Alberta Environment and Parks, Edmonton, Alberta, May 17, 2017, PDF page 10.

¹⁹ <https://open.alberta.ca/dataset/c86572a8-560d-4f2e-a751-2467021b074a/resource/48dd8c05-fb55-4893-9769-7159770229c6/download/practicestandardwetland-may01-2017.pdf>, PDF page 12.

²⁰ <https://www.aspb.ab.ca/directory>.

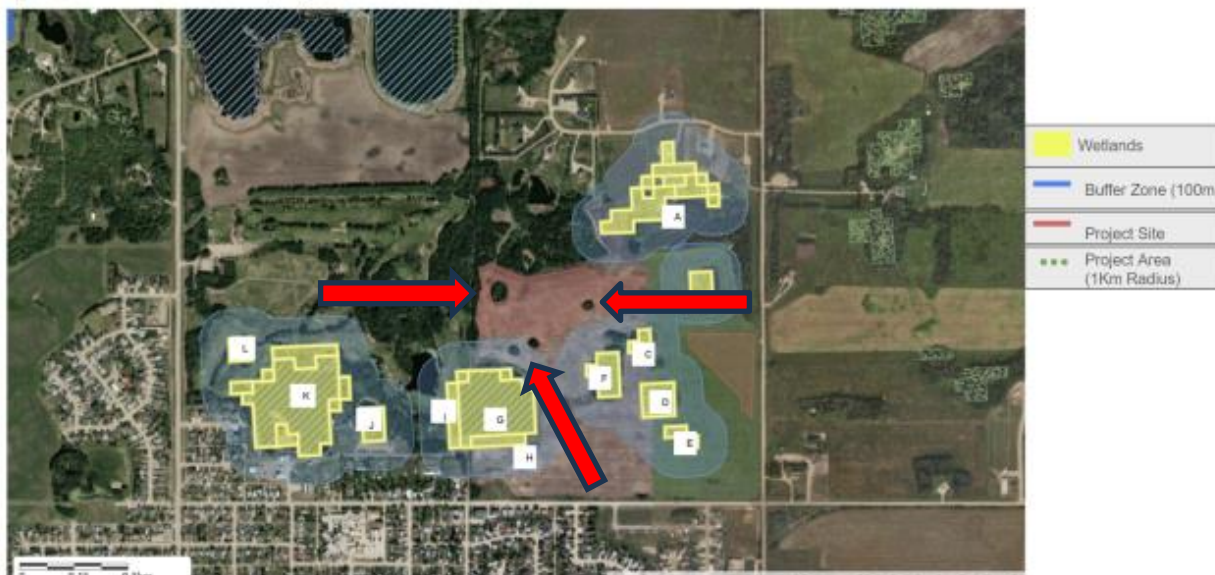
42. This is not an administrative detail. Confirming expert qualifications is important when considering evidence filed in support of an application. Doubts about the author's qualifications raise doubts about the quality of the evidence itself. Such doubts cannot be resolved in a checklist application process.

43. DEC submitted that, while it was not required to so, it included the WAIR "to provide the Commission with additional support to conclude the project has no wetland impacts and therefore no adverse environmental impacts."²¹ It further submitted that "[t]he fact that the WAIR may not meet all the requirements set out in the Wetland Assessment and Impact Report Directive or its associated documents should not be considered a valid reason to completely dismiss the findings and conclusions within the WAIR."

44. The review panel agrees that the WAIR does not meet the requirements set out in the directive. It is unclear if the WAIR included the mandatory field component. It also appears that the WAIR results are based on a remote-sensed wetland database that does not include information on permanence.²² Further, the report does not delineate any wetlands and appears to have missed four potential wetlands shown with red arrows in Figure 3-1, below.

45. These errors are not minor deficiencies. These are material errors that cast doubt on the accuracy of the entire report and the other underlying information DEC relies on in support of its checklist application. Resolving the AUC's concerns about the WAIR, and other supporting information DEC relies on, cannot be efficiently achieved in a checklist application process.

Figure 3-1: Wetlands in project assessment area



²¹ Exhibit 29782-X0001, Application of Dutta Energy Corporation for Review and Variance of Decision 29670-D01-2024 PDF page 11.

²² GOA. 2017. Wildlife Directive for Alberta Solar Energy Projects. AEP Fish and Wildlife 2017 No. 5. October 4, 2017. <https://open.alberta.ca/dataset/6a71e752-8d72-4126-a347-e9f328279904/resource/527c6a99-4004-440c-8033-07872cb8adb0/download/wildlifedirective-albertasolarenergyprojects-oct4-2017.pdf>, PDF page 7.

46. Although it was not required to do so, the Commission considered the February environmental evaluation that DEC submitted after the proceeding record was closed. As noted above, the February environmental evaluation is substantially the same document as the additional environmental evaluation submitted with the review application and the WAIR. The Commission notes that the February environmental evaluation includes sign-off from an authenticating professional for wetland documents.

47. Unlike the WAIR, the two environmental evaluations state a biophysical survey was carried out. However, it is not clear how data from the biophysical survey was used and if professional interpretation was used in delineating any of the wetlands in the area. It appears DEC once again relied on a remote-sensed database to delineate the wetlands. DEC still fails to identify the four potential wetlands shown in Figure 3-1, above. DEC also does not explain if an assessment was carried out to determine that these are not wetlands.

48. The review panel is very concerned that DEC has, for a third time, submitted substantially the same deficient information in support of its application. DEC further erodes its credibility each time it submits applications or supporting materials that do not address the material deficiencies from the previous submission. This reinforces the conclusion that concerns with DEC's submissions cannot be effectively resolved through a checklist application process.

49. Given these deficiencies, the review panel confirms the AUC's initial conclusion that the evidence filed by DEC does not support its assertion that the project will have no environmental effects. Therefore, the checklist application process does not apply.

50. This is not a conclusion on the environmental effects of the project. This is a conclusion on the completeness of the Bright Future project application and goes directly to the AUC's decision to close the checklist application. Given the uncertainty regarding the author's qualification to prepare the WAIR and the deficiencies in the WAIR and two environmental evaluation reports, the review panel finds that DEC has not demonstrated an error of any kind in the December closure letter. Accordingly, DEC's request for review on this ground is denied.

5.3.3 The AUC's direction on future applications was reasonable and consistent with Rule 007

51. DEC's second ground for review was that the AUC erred when it directed it to file future applications using the full Rule 007 process. DEC submits that the AUC's conclusion that it was careless or misleading is incorrect and that, instead of closing the Bright Future project (and other checklist applications), the AUC ought to have pursued its concerns about those applications through information requests.

52. The laws governing the AUC give it significant discretion to carry out its mandate. Section 8(2) of the *Alberta Utilities Commission Act* empowers the Commission to "... do all things that are necessary for or incidental to the exercise of its powers and the performance of its duties and functions." Section 23(1)(a) of that act authorizes the Commission to "... do any act, matter or thing, forthwith or within or at a specified time and in any manner directed by the Commission." DEC is a new entrant to Alberta's generation market. As noted, it filed nine separate checklist applications, none of which met the AUC's requirements for a checklist application. DEC also repeatedly disregarded numerous AUC directions to refile its applications using a full Rule 007 application process.

53. Inherent in the checklist application process is an element of “regulatory trust.” The process allows applicants to file abbreviated applications on the understanding that the requisite underlying materials have been prepared in accordance with Rule 007 and will be filed upon request. As noted earlier, checklist applications were initially available only to “established applicants.” While the AUC later expanded eligibility to all eligible applicants, it retained its discretion to vary that process in accordance with the broad statutory authority set out above. DEC’s conduct, which is described in detail in the December closure letter, resulted in an erosion of the AUC’s regulatory trust in the evidence DEC was relying upon in support of its checklist applications and of DEC’s understanding of the Rule 007 requirements and its obligations as an applicant under Rule 007.

54. Given the AUC’s broad discretion over the application process and DEC’s evident unfamiliarity with the AUC’s filing requirements and application process, and considering DEC’s continued disregard for AUC directions, the review panel sees no error in the AUC’s direction to DEC to file all future applications using the full application process under Rule 007. Accordingly, DEC’s request for review on this ground is also denied.

55. The review panel emphasizes that this is not a decision on the merits of the application. Rather it is another clear direction to DEC to file a full application under Rule 007 for the Bright Future project. As noted, DEC (like all other applicants) is required by Rule 007 to prepare and retain all the information required by Rule 007 to address SP1 to SP30 even when filing a checklist application. Accordingly, it is unclear what barrier exists to DEC filing a full application and the review panel finds no prejudice to DEC in this decision.

6 Decision

56. The review panel finds that DEC has not met the requirements for a review of closure letter 29670-D01-2024 and the application for review is dismissed.

57. The AUC emphasizes that the checklist application process is intended to be an expedited approach to low-risk applications. As noted above, DEC has filed nine separate checklist applications for four different projects, all of which were closed because they did not meet the requirements of a checklist application. The AUC will not process any further applications from DEC submitted on a checklist application form.²³

Dated on March 6, 2025.

Alberta Utilities Commission

(original signed by)

Cairns Price
Commission Member

²³ Decision 29738-D01-2025, which denies DEC's application to review and vary closure letter 29597-D01-2024, is issued concurrently with this decision.